THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

-

W.P.No.16196 of 1997

-

Between
Konga Kedari ..Petitioner

AND

The Government of Andhra Pradesh represented by the District Collector and others ..Respondents

JUDGMENT

21.2.2007

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.16196 of 1997

JUDGMENT:

This writ petition had been filed calling in question the orders passed by the Revenue Divisional Officer, Warangal in his proceedings dated 23.2.1997 rejecting the claim of the petitioner for payment of compensation for his land utilised for formation of a road.

On the previous occasion, the writ petitioner had instituted W.P.No.19101 of 1988 which came to be decided by a Division Bench of this Court on 15.7.1996. Without going into the merits, the Division Bench directed the Revenue Divisional Officer, Warangal to consider the petition of the petitioner for payment of compensation and decide the same within two months thereafter. In pursuance thereof, the present impugned order came to be passed on 23.2.1997. The Revenue Divisional Officer after much goading from this Court, could file his counter affidavit in this case only in the second week of February, 2007. He asserts that pursuant to the directions issued by this Court in W.P.No.19101 of 1988, he had conducted certain discreet enquiries and he had also examined the reports said to have been furnished by the Executive Engineer, Panchayat Raj Department as well as the Sarpanch of the Gram Panchayat, Ellanda and that the report of the survey had revealed the following:

"As per the revenue record, the writ petitioner Sri Konga

> Kedari is occupier of S.Nos.395/A extent 0.24 guntas, 395/B extent 0.25 gts., 395/C 0.25 gts., 397/C extent 1.20 Ac., 357/D, extent 1.12 gts., and 397/E extent Ac.1.13 gts. Respectively and the road was laid in Survey Nos.391 extent Ac.0.03 gts., S.No.394 extent Ac.0.02 gts., S.No.395 extent Ac.0.06 gts., S.No.397 extent Ac.0.04 gts., respectively out of the above Survey Numbers in which road was laid the petitioner is occupier of Survey Nos.395 extent Ac.0.06 gts., S.No.397 extent 0.04 gts., It is evident that an extent of Ac.0.10 gts., of land for which the petitioner is occupier is used for laying the road."

The counter affidavit further asserts that the road in question was laid in the year 1985-86 with an estimated cost of Rs.20,000/-. It is said that the road was laid only upon the voluntary donation by the villagers and hence, no proposals for its acquisition have been initiated.

It is a matter where much can be said on both sides. At the time when the road was said to be formed in1985-86, it is quite probable, along with the other villagers, the writ petitioner also would not have raised any objection and perhaps, may have volunteered to allow the formation of the road through his lands and in the process, an extent of Ac.0.10 guntas land of his had formed part of the road that has been laid. It is also equally probable that the writ petitioner may not have used the land in question for any productive purposes and consequently, he may have been allowing the land to form part of a cart track which was being put to common use by the villagers. The counter affidavit has specifically asserted that the road in question has been formed only on the existing cart track to make it more convenient for effective utilisation. It is therefore, clear that the land of the writ petitioner of an extent of Ac.0.10 guntas may have formed part of an existing cart track over which the road in question had been laid in the year

1985-86. Unfortunately, the writ petitioner has neither protested nor did prefer any legal action necessary to pre-empt the formation of the road in the process the land of an extent of Ac.0.10 guntas of his became part of the road.

Since the formation of the road is in all respects useful for the common good and benefit of the villagers, I do not wish to upset the road formation and order for restoration of the land in question in favour of the writ petitioner. Such a measure at this distant point of time will not, obviously, sub-serve the public good and public utility. Since the history disclosed that the writ petitioner was also not putting it to effective use and allowed it to form part of a cart track even prior to the formation of the road in question, larger public interest impels me from desisting restoration of the land in favour of the writ petitioner. But at the same time, one cannot ignore the fact that any donation of land can only be through an instrument known to law or atleast through some un-suspectious recording of the event of oral donation in the presence of impartial and neutral agencies which can inspire confidence in accepting the recorded event of donation as true. Inspite of his best efforts, the learned Government Pleader could not demonstrate with reference to the record that the voluntary donation of the land of the writ petitioner has been evidenced at all. Therefore, I am not able to agree with the learned Government Pleader that this writ petition should be dismissed for the delay and latches on the part of the writ petitioner, though as a general rule they are liable to be put against the petitioner. It is well to remember that the petitioner has already instituted another W.P. about this very issue in the year 1988.

In these set of circumstances, taking all factors into account including the fact that this is the second round of litigation and the

land of the writ petitioner that has now formed part of the road that is laid in the year 1985-86 being only Ac.0.10 gts., I consider it appropriate to direct the District Collector and the Chief Executive Officer of the Zilla Parishad, Warangal to arrive at the market value of the land in question in the year 1985-86 and pay the same with interest at the rate of 6% per annum with effect from 1.1.1997, inasmuch as this Court while disposing of the W.P.No.19101 of 1988 on 15.7.1996 expected the same to be done by the Revenue Administration. Therefore, the market value of the land in question be determined and the same be paid with interest as indicated supra to the writ petitioner within a maximum period of three months from today.

With this, the writ petition stands disposed of.

_____

21.2.2007 **NOOTY RAMAMOHAN RAO.J.**

psr